UNITED STATES DISTRICT COURT
FOR THE NORTHISN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARWAN DAHER Plaintiff, v. SALLIE MAE BANK, Defendant.	CIVIL ACTION 1:16-cv-08394 COMPLAINT JURY TRIAL DEMANDED

COMPLAINT

NOW COMES the Plaintiff, MARWAN DAHER ("Plaintiff"), by and through his attorneys, SULAIMAN LAW GROUP, LTD., complaining of the Defendant, SALLIE MAE BANK ("Defendant") as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action seeking redress for violations of the Telephone Consumer Protection Act ("TCPA") pursuant to 47 U.S.C. §227 and violations of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") pursuant to 815 ILCS 505/1.

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by the TCPA, and 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States.

3. The Court has supplemental jurisdiction over the state law ICFA claim under 28 U.S.C. §1367.

4. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business in the Northern District of Illinois and all of the events or omissions giving rise to the claims occurred within the Northern District of Illinois.

PARTIES

5. Plaintiff is a consumer and natural person over 18-years-of-age who, at all times relevant, resided in the Northern District of Illinois.

6. Defendant Sallie Mae Bank is a bank chartered under the laws of the State of Utah with its principal place of business located at 175 South West Temple, Suite 600, Salt Lake City, Utah 84101. Defendant provides private student loans, loan servicing, savings accounts, credit cards, and insurance products to consumers in Illinois.

FACTS SUPPORTING CAUSE OF ACTION

7. On December 1, 2016, Plaintiff executed a privately funded student loan promissory note in the amount of $3,500.00 ("subject loan") in favor of Defendant to finance his graduate studies.

8. At the time Plaintiff obtained the subject loan, he provided Defendant with his primary cellular phone number ending in 5908.

9. On or around June 15, 2016, facing financial hardship, Plaintiff fell behind on the subject loan.

10. On July 7, 2016, Defendant began placing collection calls to Plaintiff's cellular telephone ending in 5908. Plaintiff is the sole subscriber, owner, possessor, and operator of this cellular telephone number. Plaintiff is and has always been financially responsible for this cellular phone and its services.[1]

11. On July 8, 2016, Plaintiff answered a phone call from Defendant. Defendant's representative repeatedly requested Plaintiff to verify the last four digits of his social security number and to verify his cellular telephone number. In response, Plaintiff demanded that Defendant cease placing calls to his cellular phone.

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[1] Plaintiff's wireless service provider is AT&T.

12. On July 11, 2016, Plaintiff answered another phone call from Defendant. Defendant's representative again requested Plaintiff to verify his social security number and cellular telephone number and advised Plaintiff that he was calling on behalf of Sallie Mae Bank and that the call is being recorded for quality assurance.

13. In response, Plaintiff repeatedly warned Defendant that it should not be calling him, that the phone calls are getting harassing, that he was trying to get the money to pay, and that this is the second occasion he has demanded Defendant to cease calling him. The representative of Defendant replied by stating: "**We are legally allowed to call you up to 8 times per day using an automated dialer system.**[2] We won't stop calling you until you pay. The only way to stop the calls is if you pay."

14. On July 13, 2016, Plaintiff answered *another* phone call from Defendant. Defendant's representative again requested Plaintiff to verify some information in regard to the subject loan. In response, Plaintiff demanded that Defendant cease placing calls to his cellular phone because the phone calls are invading his privacy, and that the calls are affecting his life. In this phone call, Plaintiff demanded that Defendant stop calling him on his cellular telephone on at least *three* separate occasions.

15. On July 25, 2016, Plaintiff answered *another* phone call from Defendant. Defendant's representative again requested Plaintiff to verify some information in regard to the subject loan. In response, Plaintiff explained that he has previously revoked consent to be called on his cellular phone. In response, Defendant's representative assured Plaintiff that she will notate the

[2] The TCPA regulates, among other things, the use of automated telephone equipment, or "auto-dialers." Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of auto-dialers to make any call to a wireless telephone numbers in the absence of an emergency or the prior express consent of the called party.

revocation of consent on his account, but that the calls will continue until Plaintiff makes a payment on the subject loan.

16. On August 4, 2016, Plaintiff answered another phone call from Defendant. Plaintiff quickly asserted that he made a payment on the subject loan and *again* demanded that Defendant cease phone calls to his cellular telephone. The Defendant's representative stated that she will notate on Plaintiff's account that: "**you no longer want to receive calls using an auto-dialer**."

17. Notwithstanding Plaintiff's numerous demands that Defendant's collection calls cease, Defendant placed or caused to be placed an average of 4 phone calls per day between July 8, 2016 through August 4, 2016, in an attempt to collect upon the subject loan.

18. In total, Defendant placed or caused to be placed no less than 81 harassing phone calls to Plaintiff's cellular phone from July 8, 2016 through August 4, 2016, with calls taking place several times in one day, up to 8 times per day, and on the weekends.

19. In the calls that Plaintiff did answer, Plaintiff was greeted by a noticeable period of "dead air" while Defendant's automated telephone dialing system attempted to connect Plaintiff to a live agent.

20. Specifically, there would be an approximate 5 second pause between the time Plaintiff said "hello," and the time that a live agent introduced them self as a representative of Defendant attempting to collect on the subject loan.

21. In the calls that Plaintiff did not answer, Defendant would leave a pre-recorded/artificial voicemail on Plaintiff's cellular phone, each of which was exactly 21 seconds in duration. There would be an audible click from the receiver and after a significant pause, a pre-recorded message was left by Defendant using a prerecorded voice requesting Plaintiff to call back.

22. Defendant left approximately 70 pre-recorded/artificial voicemails on Plaintiff's cellular between July 8, 2016 through August 4, 2016, causing Plaintiff's voicemail to become debilitated.

23. Plaintiff's demands that Defendant's phone calls cease fell on deaf ears and Defendant continued its phone harassment campaign.

24. As a result of Defendant's harassing phone calls, Plaintiff brought the subject loan current at the expense of other basic utilities and services.

DAMAGES

25. Plaintiff has suffered and continues to suffer from emotional distress, depression, mental anguish, and anxiety as a direct result of Defendant's unlawful collection practices.

26. Defendant's harassing phone calls have severely disrupted Plaintiff's daily life and general well-being.

27. The majority of Defendant's distracting phone calls to Plaintiff were placed during work hours and severely decreased Plaintiff's work productivity.

28. Defendant's phone harassment campaign and illegal collection activities have caused Plaintiff actual harm, including but not limited to, invasion of privacy, intrusion upon and occupation of Plaintiff's cellular telephone capacity, wasting Plaintiff's time and causing risk of injury by interrupting and distracting Plaintiff, aggravation that accompanies unsolicited telephone calls, harassment, emotional distress, mental anguish, anxiety, loss of concentration, diminished value and utility of his telephone equipment and telephone subscription services, the wear and tear caused to his cellular telephone, the loss of battery charge, the loss of battery life, and the per-kilowatt electricity costs required to recharge his cellular telephone as a result of increased usage of his telephone services.

29. Concerned about the violations of his rights and invasion of his privacy, Plaintiff sought the assistance of counsel to permanently cease Defendant collection efforts, incurring costs and expenses meeting with his attorneys.

COUNT I – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

30. Plaintiff restates and realleges paragraphs 1 through 29 as though fully set forth herein.

31. Defendant repeatedly placed or caused to be placed frequent non-emergency calls, including but not limited to the calls referenced above, to Plaintiff's cellular telephone number using an automatic telephone dialing system ("ATDS") or prerecorded or artificial voice without Plaintiff's consent in violation of 47 U.S.C. §227 (b)(1)(A)(iii).

32. The TCPA defines ATDS as "equipment which has the capacity...to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers." 47 U.S.C. §227(a)(1).

33. Based on Defendant's admission referenced above regarding the use of auto-dialers and lack of prompt human response during the phone calls in which Plaintiff answered, Defendant used a predictive dialing system to place calls to Plaintiff's cellular telephone.

34. "A predictive dialer is equipment that dials numbers and, when certain computer software is attached, also assists [caller] in predicting when an [agent] will be available to take calls. The hardware, when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers." *Meyer v. Portfolio Recovery Associates, LLC*, 707 F.3d 1036, 1043 (9th Cir. 2012).

35. The Federal Communications Commission ("FCC") has determined that predictive dialing systems are a form of an automatic telephone dialing system. *Id.*

36. Upon information and belief, the predictive dialing system employed by Defendant transfers the call to a live agent once a human voice is detected, thus resulting in a pause after the called party speaks into the phone.

37. Defendant violated the TCPA by placing no less than 81 harassing phone calls to Plaintiff's cellular phone from July 8, 2016 through August 4, 2016 to Plaintiff's cellular phone, using an ATDS without his consent.[3]

38. Any prior consent, if any, was revoked by Plaintiff's verbal revocations. Plaintiff revoked consent to be called on his cellular phone on no less than 12 separate occasions during the phone

39. As pled above, Plaintiff was severely harmed by Defendant's collection calls to his cellular phone.

40. Upon information and belief, Defendant has no system in place to document and archive whether it has consent to continue to contact consumers on their cellular phones.

41. Upon information and belief, Defendant knew its collection practices were in violation of the TCPA, yet continued to employ them to increase profits at Plaintiff's expense.

42. Defendant, through its agents, representatives and/or employees acting within the scope of their authority acted intentionally in violation of 47 U.S.C. §227(b)(1)(A)(iii).

43. Pursuant to 47 U.S.C. §227(b)(3)(B), Defendant is liable to Plaintiff for a minimum of $500 per call. Moreover, pursuant to 47 U.S.C. §227(b)(3)(C), Defendant willful and knowing violations of the TCPA should trigger this Honorable Court's ability to triple the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. §227(b)(3)(C).

[3] Upon information and belief, Defendant maintains business records that show all calls that it placed to Plaintiff's cellular telephone.

WHEREFORE, Plaintiff MARWAN DAHER respectfully prays this Honorable Court for the following relief:

a. Declare Defendant phone calls to Plaintiff to be violations of the TCPA;

b. Award Plaintiff damages of at least $500 per phone call and treble damages pursuant to 47 U.S.C. § 227(b)(3)(B)&(C); and

c. Award any other relief this Honorable Court deems equitable and just.

COUNT II – VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD ACT

44. Plaintiff restates and reallages paragraphs 1 through 29 as through fully set forth herein.

45. The Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") states:

> Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. 815 ILCS 505/2.

46. Plaintiff is a "person" and a "consumer" as defined in ICFA, 815 ILCS 505/ (c) and (e) respectively.

47. Defendant is engaged in commerce in the State of Illinois with regard to Plaintiff, and the subject loan. Defendant specializes in lending, servicing, and debt collection, which are activities within the stream of commerce and utilized in its regular course of business.

48. Defendant violated 815 ILCS 505/2 by engaging in unfair acts in its attempts to collect the subject loan from Plaintiff.

a. Unfairness

49. It was unfair for Defendant to seek to collect the subject loan from the Plaintiff through relentless harassing phone calls to his cellular phone attempting to induce him into making a payment.

50. It was unfair for Defendant to place or cause to be placed no less than 81 harassing phone calls to Plaintiff's cellular phone from July 8, 2016 through August 4, 2016, using an ATDS without his consent, with calls taking place several times in one day, up to 8 times per day, and on the weekends.

51. It was unfair for Defendant to continue placing calls to Plaintiff after he demanded that the calls cease on no less than 12 separate occasions.

52. It was unfair for Defendant to misrepresent to Plaintiff that Defendant *could* and would continue placing calls as long as the subject loan was default. Defendant's representation is false because the TCPA permits consumers to revoke consent to be called on their cellular phones.

53. Defendant's unfair conduct is inherently oppressive as Plaintiff had no choice but to submit to the relentless harassing phone calls to his cellular phone.

54. Moreover, Defendant's unfair conduct is against public policy because it needlessly subjects consumers to unsolicited calls, resulting in a significant harm in the form of invasion of privacy and increased risk of personal injury resulting from the distraction caused by the never-ending phone calls.

55. Upon information and belief, Defendant systematically places unsolicited and harassing phone calls to consumers in Illinois in order to aggressively collect debts in default or assumed to be in default to increase its profitability at the consumers' expense.

56. Upon information and belief, placing unsolicited and harassing phone calls to Illinois consumers is an unfair business practice willfully employed by Defendant and is done on a large scale.

57. Additionally, Defendant's unlawful and unfair debt collection efforts gives it an unfair competitive advantage over businesses that collect lawfully (companies who legally place calls with consent, as authorized, and who lawfully cease calling upon requests to stop).

58. As alleged above, Plaintiff was substantially harmed by Defendant's misconduct.

59. An award of punitive damages is appropriate because Defendant's conduct described above was outrageous, willful and wanton, showed a reckless disregard for the rights of the Plaintiff and consumers, generally, and Plaintiff had no choice but to submit to the innumerable phone calls.

WHEREFORE, Plaintiff MARWAN DAHER respectfully prays this Honorable Court for the following relief:

a. Enter judgment in Plaintiff's favor and against Defendant;
b. Award Plaintiff his actual damages in an amount to be determined at trial;
c. Award Plaintiff his punitive damages in an amount to be determined at trial;
d. Award Plaintiff his reasonable attorney's fees and costs pursuant to 815 ILCS 505/10a(c); and
e. Award any other relief this Honorable Court deems equitable and just.

Plaintiff demands trial by jury.

Dated: August 26, 2016

Respectfully Submitted,

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